



issue fee, "the patent shall issue"); Harley v. Lehman, 981 F. Supp. 9, 11-12, 44 USPQ2d 1699, 1701-02 (D.D.C. 1997). As inspection of the record fails to reveal that any timely action was taken under 37 CFR 1.313 to prevent issuance by an appropriately empowered USPTO official **prior** to publication, the patent clearly issued to the above-identified application on February 5, 2002. See Blacklight Power, Inc. v. Dickinson, 2000 U.S. Dist LEXIS 11754, 55 USPQ2d 1812 (D.D.C. 2000).

Unfortunately, while the petition was appropriately sent directly to the Office of Petitions, pursuant to MPEP 1308, with sufficient time to effectuate withdrawal if the petition had been diligently treated, through an inadvertent clerical error, the petition was overlooked by this office and the patent duly issued. The Office of Petitions regrets this oversight and sincerely apologizes for any inconvenience this may have caused applicant. Nevertheless, the inadvertence of the USPTO in this matter has caused or contributed to an extraordinary circumstance beyond the control of applicant, wherein further relief may be forthcoming.

None of the authorized fees have been charged, or the check processed. Check No. 1399, in the amount of \$310, is being returned with this decision.

This patented file is being forwarded to the Special Programs Law Office for further consideration of this matter.

Telephone inquiries concerning this matter may be directed to the undersigned at telephone number (703) 305-1820.



Brian Hearn  
Senior Petitions Examiner  
Office of Petitions  
Office of the Assistant Commissioner  
for Patent Examination Policy

Enclosure: Check No. 1399